

IN-HOME SUPPORTIVE SERVICES:

An Open Door for Abuse and Fraud

INTRODUCTION

Should the citizens of California and San Diego County be concerned that tax dollars for in-home care services for the most vulnerable among us might be paid to a convicted felon? That County officials are prohibited from making unannounced home visits to check on the citizen's continuing need for services and validating the hours on a caregiver's time card were actually worked? Should taxpayers be concerned that the costs of the In-Home Supportive Services program have more than doubled in the past ten years and continue to spiral upwards? That only about 20% of those receiving these services are actually considered severely impaired and unable to care for themselves?

Unfortunately, these concerns are real; taxpayers are paying a high price for a program that has been widely criticized as being inefficient and subject to fraud and abuse.

In-Home Supportive Services (IHSS) is a state-and federally-mandated entitlement program, funded by federal, state and local taxes. It is intended to provide "non-medical services" to low-income aged, blind and disabled individuals so they may remain safely in their home and avoid out-of-home placement, such as a nursing home. In San Diego County (County), the program is administered through the Health and Human Services Agency (HHSA). Approximately 25,000 people in the County currently receive IHSS services, and approximately 22,000 individual caregivers assist IHSS consumers by providing domestic and related services as well as personal care. According to state and federal regulations, applicants for the program must be receiving federal Supplemental Security Income (SSI) and/or state MediCal benefits, be eligible for those benefits or, if not eligible financially, agree to a co-pay for IHSS services. Applicants must also meet the state's criteria for determining the extent of their disability to apply for IHSS services.

To recruit and train prospective caregivers, the originating law specified that counties could form a non-profit consortium of caregivers or a "public authority," separate and distinct from county operations and regulations. In this County, the Public Authority is a quasi-governmental body charged with managing the caregiver application process, maintaining a caregiver registry, handling caregiver payroll, and serving as the "employer of record" for caregivers. The registry also provides an electronic matching system that puts caregivers and consumers together upon a consumer's request. However, the law also permits consumers to hire their own caregiver directly, usually relatives or friends. Thus, the majority of caregivers (67%) are **not** on the Public Authority's registry. The Public Authority provides some training to prospective caregivers on the registry, but since most caregivers are not on the registry, most do not receive the training, nor can the Public Authority assess those caregivers' competence to deliver the care. As stipulated in the law, the Public Authority operates under an interagency agreement with the County, and does so as an "independent agency." Regardless of how the caregiver is recruited, the consumer is responsible for hiring, supervising, firing, approving the time card and otherwise serving as the employer, except for the payroll functions assigned to the Public Authority. Thus, the IHSS program is "consumer-driven" as required by law. This arrangement requires the

disabled or aged consumer to bear the burden of being an employer when many, if not most, may not be able to handle such responsibilities. In addition, the County currently has no authority to verify a caregiver worked the assigned hours or that required care was delivered to the consumer, although tax dollars fund the program.

A report by the 2006/2007 San Diego County Grand Jury described the difficulty many seniors and disabled persons have in navigating the IHSS bureaucracy: it “is riddled with inefficiencies... [and] expect[s] vulnerable seniors to hire/supervise competent caregivers.” In its response to this report, County and IHSS management rejected the recommendations to improve the program, stating they were not feasible, prevented by state or federal law or not warranted. Only the San Diego County District Attorney (DA) concurred with and implemented the recommendations.

The 2010/2011 San Diego County Grand Jury (Grand Jury) received a complaint alleging significant waste of funds and possible caregiver and consumer fraud in the IHSS program. The complainant alleged local IHSS supervisors fail to follow-up appropriately or comply with state law regarding assessing the consumer’s degree of disability, to verify that the consumer requires the current level of care and to investigate possible fraud. The complainant believed these failures are the result of unreasonably high caseloads (300-350 per caseworker) and case complexity. The complainant alleged caseworkers (also called “social workers”) are not educated at a professional level (masters degree in social work or similar) and that inexperienced caseworkers and supervisors do not receive adequate or timely training in IHSS policies and procedures, particularly in identifying and preventing fraud.

The Grand Jury investigated the allegations, evaluated the IHSS program and this report makes recommendations for improvement. The Grand Jury believes the recommendations, with the possible exception of one HHSA recommendation, can be implemented with minimal impact on the budgets of the agencies involved. What the recommendations will require is a high level of inter- and intradepartmental cooperation to break down the compartments, or “silos,” in which they currently work. The recommendations urge the County’s elected and management officials to be proactive in working with the legislature to implement laws that will protect vulnerable citizens.

INVESTIGATION

The Grand Jury conducted its investigation by interviewing the complainant and several representatives of the:

- County Health and Human Services Agency
- IHSS program
- District Attorney
- Public Authority
- County Sheriff
- Board of Supervisors

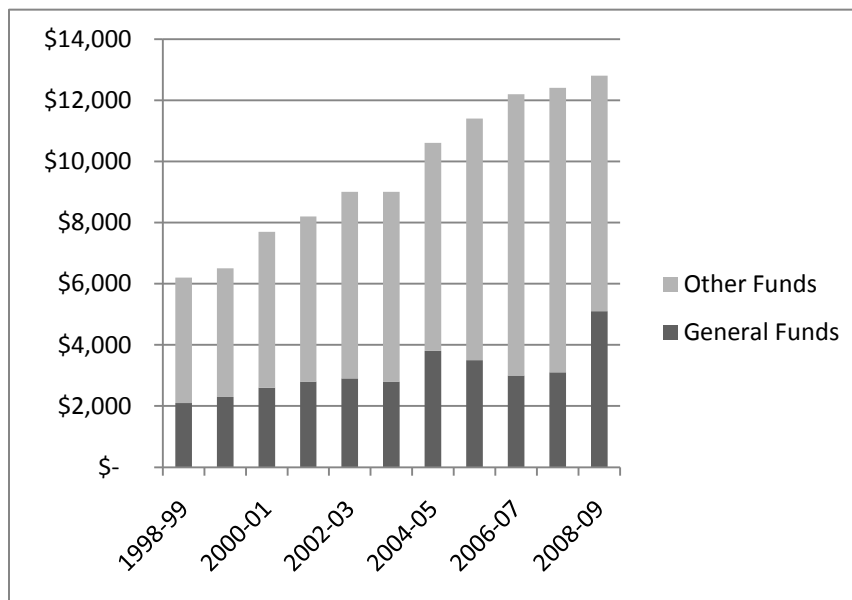
The Grand Jury reviewed many federal, state and local websites to become familiar with the laws regarding IHSS program administration, funding, consumer eligibility and caregiver recruitment. The Grand Jury also researched the websites of other California counties, state and County

public records as well as print and on-line newspaper websites to determine the impact of IHSS services and costs in the County. It also reviewed how other states manage in-home care, all funded jointly by Medicaid, the state and counties. The Grand Jury is aware it does not have jurisdiction over the state or the legislature and how they manage federally mandated programs; however, since IHSS in San Diego County is significantly funded by local taxes and delivery of services is managed by the County, we believe an in-depth review of how these funds are spent to support local citizens is appropriate.

DISCUSSION

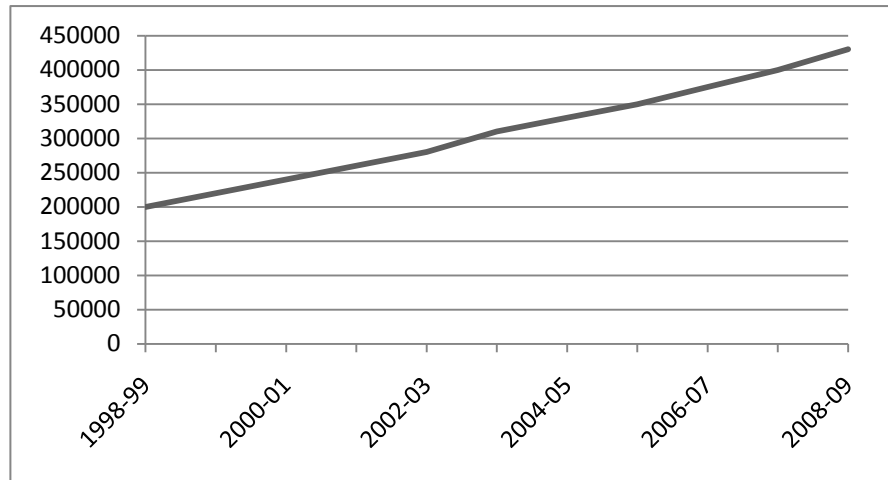
The IHSS program is a highly complex bureaucracy affected by many overlapping state and federal laws and regulations. According to data from the County, in fiscal year 2009/2010 the County contributed approximately \$53 million (17.5%) of a total \$305 million in IHSS expenditures locally to support the program; state and federal funding covered the remaining amount. Costs have increased dramatically, approximately 9% per year since 2000, which all witnesses interviewed agree are unsustainable. The County Supervisors noted in public deliberations for the County budget in the past two to three years that meeting the increasing costs of the IHSS program has diverted funds from Child Welfare Services, Foster Care, Welfare-to-Work, CalWORKs and California Children Services. IHSS enrollment has more than doubled statewide since 1999 and is the fastest-growing social service program, costing California taxpayers \$5.5 billion annually (see tables below). In this County alone, of the approximately 25,000 consumers enrolled in IHSS, only 5,000 are considered “severely impaired” and unable to care for themselves without in-home assistance. These are the MediCal/SSI recipients IHSS was designed to assist.

California In-Home Supportive Services Cost Per Case ¹



¹ Taylor, Mac. (January 21, 2010). Considering the State Costs and Benefits: In-Home Supportive Services Program. California Legislative Analyst's Office, p. 9; http://www.lao.ca.gov/reports/2010/ssrv/ihss/ihss_012110.pdf

California In-House Supportive Services Caseload²



Caregivers may not work more than the hours assigned to each consumer after the functional assessment is completed; the assessment determines how much assistance the consumer requires to perform “activities of daily living,” i.e. bathing, toileting, dressing, ambulation, preparing meals, etc. The maximum amount of care allowed is 283 hours per month for the most dependent consumer. As of this writing, caregivers in the County are paid \$9.50 per hour. The IHSS program does not provide 24-hour assistance, and someone who needs such care may be denied IHSS services unless family or friends agree to cover the unpaid hours. Several “stakeholder” groups have formed over the years that provide citizen involvement and political influence to assure IHSS services are maintained at the current level, if not increased. Stakeholders include legislators, caregiver unions, public authority directors and consumer groups, all of whom lobby lawmakers for their own interests.

The Grand Jury learned that loopholes and flaws in the state/federal regulations for administering the program are significant. The flaws include an inability to validate the hours caregivers state they worked and to verify services actually were provided. Until 2009, most potential caregivers were not required to submit to a background check, thus allowing those with an undetected criminal history to be caregivers. In 2009, the state legislature passed a law requiring all current and prospective caregivers, not just those listed on the Public Authority registry, to complete a background check using electronic fingerprinting no later than December 31, 2010. As of this writing, 97% of caregivers in the County have completed the screening. Beginning February 1, 2011, the background check includes noting some felony and violence-related convictions that will disqualify a prospective caregiver from being listed with the Public Authority.

While all current and prospective providers must submit to the background check, information about a caregiver’s criminal background may **not** be provided to consumers because of “privacy

² Ibid.

restrictions.” Thus, a consumer may directly hire a caregiver with a felonious past. Currently, only two state penal code violations (felony convictions for child and/or elder abuse, welfare or other economic fraud) are cause to reject a prospective caregiver from the Public Authority registry. At the governor’s urging, the legislature passed a law in 2009 increasing the list of felony exclusions to include a conviction for **any** felony and specific serious misdemeanors. However, in a suit filed by caregiver unions, a state appeals court issued a temporary restraining order preventing full implementation of the law. The plaintiffs allege that the California Department of Social Services, which administers the program at the state level, has no authority to prevent caregiver applicants with any felony conviction from providing services. After two subsequent court hearings, the last trial court found “the state is not allowed to use all felonies and specified misdemeanors to disqualify individuals from being paid by the IHSS program.”³ The state appealed this decision, which is pending before the California Court of Appeal, First Appellate District, in the case of Beckwith v. Wagner, case number A128631. Another obstacle to reform includes the prohibition of IHSS caseworkers to make unannounced home visits to check on the consumer’s continuing need for services, particularly those receiving the most funds and care hours, and to determine if indeed those services were delivered.

The Grand Jury learned the original intent of the program, to help severely disabled adults and frail elderly stay in their homes and avoid entering a nursing home, has been diluted by the legislature by adding other entitlements to the original law. These added entitlements include disabled adults with temporary or minimal disability, disabled children and persons with mental or cognitive disabilities. These consumers may require significantly more hours of care and not necessarily be avoiding out-of-home placement. Such enhancements to the eligibility criteria are imprecise and resulted in inflated program costs beyond what was originally intended and what counties are able to fund. After analyzing the information received, the Grand Jury believes the assessment criteria for the consumer’s functional abilities need revision to be more precise so that the intended recipient clearly meets the requirements for in-home assistance to avoid out-of-home care.

Because eligibility for IHSS has grown over the past decade, IHSS caseworkers handle an enormous caseload, approximately 300+ consumers each. The stated qualifications for a caseworker include a minimum of a bachelors degree in a social science (psychology, sociology, social work or anthropology) or the “equivalent.” Some caseworkers may be promoted to the position without the degree because of their experience or longevity in IHSS or with other welfare departments in the County. They are not required to obtain further formal education. New caseworkers receive on-the-job training consisting of a ten-day training “academy” (includes topics such as determining consumer eligibility, case management and preventing fraud), plus riding-along with an experienced caseworker or supervisor doing in-home consumer functional assessments. The DA’s office also provides training in fraud prevention and detection. Once the consumer’s application is approved, the assigned caseworker visits the consumer in the home and gathers financial, eligibility and other information, and evaluates how the consumer performs activities of daily living. This assessment requires “sophisticated observation skills,” according to some witnesses. These skills include assessing the home’s condition, consumer’s state of physical/mental health, ability to communicate, family interactions, whether the

³ <http://www.udwa.org/2010/03/detail-of-current-changes-to-ihss/>

consumer's needs can be met by IHSS services, et al. It may take one to two years for a caseworker to reach the experience level required to handle a caseload of 300+ consumers.

The Grand Jury confirmed another obvious loophole in the current IHSS law. Because the regulations were originally written to make the program "consumer-driven," IHSS staff and the Public Authority are prohibited from verifying approved services were actually performed by the caregiver. The consumer signs the caregiver's time card, but neither IHSS nor the Public Authority is permitted to confirm the caregiver worked the hours claimed on the time card. This prohibition makes no sense since tax dollars are used to pay for the services rendered, and opens the door to possible fraud by both consumer and caregiver. The Public Authority employs a staff of nine to receive the time cards, scan them into the state's electronic payroll database and transmit unverified data to Sacramento. The caregiver unions actively lobby state legislators to prevent any changes to these regulations, claiming that unannounced home visits and validating time cards 'violate the consumer's privacy.' In 2009, the state Legislative Analyst's Office evaluated this situation, determined the practice made county fraud investigations "difficult," and strongly recommended the legislature reform current time card practices.⁴ The Sacramento County District Attorney took a proactive step by creating a task force to detect and prosecute fraud in the IHSS program. In statistics recently announced, the task force filed criminal charges against 60 defendants for about \$780,000 in fraud in 2009, which they believe is only the tip of the fraud iceberg. The Grand Jury believes verifying tax dollars are being spent appropriately and consumers are receiving proper care outweigh the minor inconvenience a consumer may incur from oversight actions.

As previously noted, most caregivers are known to the consumer, such as a friend or family member. The Grand Jury learned that this arrangement may make consumers more vulnerable to abuse or neglect, as they may be reluctant to talk about a problem for fear the caregiver may mistreat or abandon them. The current law permits the IHSS caseworker only one mandated follow-up visit, by appointment, to verify the continuing need for services. County Adult Protective Services (APS) will get involved if it receives a specific allegation the consumer is not receiving proper care or being abused; the APS caseworker determines if the complaint is valid and may then work with the DA's office to determine if charges are warranted. The Grand Jury asked witnesses about actions the IHSS has taken to prevent consumer and/or caregiver fraud. Although limited by law and funding from taking independent actions to address fraud, local IHSS staff recently implemented the new state-mandated IHSS Program Integrity (PI) unit, which works with the DA and APS, hospitals and other agencies to detect and prevent fraud. The PI unit's purpose, as defined by the recent amendment to the law passed by the legislature in 2009, is to review IHSS cases, conduct unannounced home visits to confirm recipients are receiving appropriate and authorized services and ensure recipients are safe in their homes. The staff includes six investigative social workers, one supervisory social worker, two human resources control specialists and one investigator from the DA's Public Assistance Fraud unit. However, the state has yet to send out the protocols and procedures the PI units are to use in their work. In the meantime, the local HHS has developed temporary guidelines so the unit may do

⁴ LAO's Budget Analysis Series: Social Services, "IHSS Time Card Reforms," http://www.lao.ca.gov/analysis_2009/ss/ss_an109004003.aspx.

some work to detect fraud in the program. IHSS staff, consumers or a relative or friend may lodge a complaint with this unit.

The Grand Jury's investigation revealed that some consumers who are veterans and receiving federal Department of Veterans Affairs (VA) "Aid and Attendance" benefits for in-home care might also receive state IHSS services at California taxpayer expense. Because of a San Mateo County Superior Court ruling in 1990⁵, the state Department of Social Services issued a directive in 1991 that these VA benefits are excluded from being considered income or an alternative resource to IHSS benefits⁶. The maximum amount the VA provided for this benefit in FY 2010 was \$1949 per month for a married veteran, \$1644 for a single veteran. This ruling apparently allows double payment to veterans for identical services provided by the IHSS program.

In January 2010, a young man with severe developmental and physical disabilities receiving IHSS services was found near death by paramedics. According to news reports and other information gathered by the Grand Jury, he was living in "filthy, squalid conditions" in his home. His mother and brother were his caregivers of record, collecting the maximum IHSS benefits of approximately \$3000 per month in IHSS funds for the maximum hours of care. The man later died; the mother and brother were arrested, jailed and charged with allegedly neglecting him and involuntary manslaughter. For the mandated annual visit, made by appointment in early 2009, written records indicate the caseworker visited the home, but apparently did not observe any mistreatment. Although this man was severely disabled, could not speak and receiving the maximum benefits, there was no legal authority at the time for the caseworker to make an unannounced home visit to assure he was receiving the required care. If the IHSS caseworker observes or receives a specific allegation that a consumer may be neglected or mistreated, the caseworker must contact APS, which would then make a phone call or a home visit, depending on the type of abuse allegation. The subsequent investigation into the young man's death was hampered because the investigators were not permitted access on privacy grounds to the young man's IHSS file; eventually investigators obtained a search warrant to obtain the records. The Grand Jury believes that measures ensuring the consumer's privacy were not intended to obstruct a criminal investigation.

The Grand Jury learned of many incidents where IHSS consumers were physically and emotionally abused, financially ruined, or all three, because the IHSS program's rules and regulations do not provide sufficient oversight. After evaluating all testimony and research, the Grand Jury concludes it is disingenuous for government at all levels to have different standards for providing funds to assist those who require it. For example, the state and County must assure that people who want to care for foster children are thoroughly checked out and do not have a criminal past. However, frail elderly and disabled adults are expected to manage the complexities of hiring and supervising a caregiver, who may be a convicted felon, paid for with tax dollars, and with negligible oversight from the agency disbursing the funds.

Recognizing IHSS costs statewide continue to spiral upward and the state budget is severely compromised, the state legislature and governor in 2010 approved funding cuts of 14% to the program. However, a coalition of caregivers and consumers funded by the caregiver unions

⁵ Clift v. McMahon, (Superior Court San Mateo County, 1990, No. 352667)

⁶ <http://www.dss.cahwnet.gov/lettersnotices/entres/getinfo/ac191/91-31.pdf>

obtained a temporary restraining order from an appeals court preventing many of the cuts from being implemented; nevertheless, some cuts totaling 3.6% went into effect February 1, 2011. In early January 2011, the new governor proposed further cuts to in-home services and changes to the eligibility criteria for the 2011/2012 budget.

The County Board of Supervisors also determined IHSS program costs are unsustainable, and it has many administrative and legal loopholes that could lead to fraud, abuse and waste. In early 2009, they directed HHSA/IHSS management to develop proposals for reducing costs, improving background checks of caregivers, mandating caregiver and consumer training and preventing and prosecuting fraud. HHSA contracted with a national healthcare consulting firm to help them identify possible options to improve the local IHSS program and contain costs. Many possible options for containing costs, i.e. reducing services, revising eligibility rules, etc. are not feasible without waivers from the state Department of Health Care Services (DHCS) and the federal Centers for Medicare and Medicaid Services. County managers recommended several other options to “achieve greater [local] control of IHSS, and potentially achieve cost-savings, by implementing a managed, integrated long-term care program.”⁷ This option, originally proposed by the County in 1995 and authorized by the state legislature in AB1040 as a demonstration project only, requires a “Medicaid waiver” and state approval as it targets some services to specific populations (elderly, disabled, blind) requiring long-term care and not necessarily **all** MediCal recipients. The comprehensive “integrated long-term care” program would operate instead of the freestanding, expensive and poorly supervised IHSS program providing only in-home care. This proposed strategy would provide the following advantages to the County and consumers:⁸

- Cost certainty for the state and County using a capitation model, i.e. payment per person per month.
- Simplified administration for the County.
- Ability to implement a single and comprehensive case management model.
- Required access-to-care standards.
- A single point of accountability for the consumer.
- Ability to provide specific types of long-term care as needed without “disenrolling” a consumer from the plan. [Currently, IHSS consumers may be discharged from the program if they are admitted to a hospital or nursing home, and then must reapply if they return home.]
- Provides a formal quality assurance structure that can be leveraged for long-term care services.
- Provides the option to substitute services to meet a consumer’s needs when appropriate and ensures access to all required services.
- Includes appropriate consumer-directed care.

The supervisors approved the recommendations in November 2009, but implementation depends on state DHCS and federal approval and funding which has yet to occur. The new IHSS Program

⁷ Health Management Associates (October 16, 2009). Executive Summary, Attachment B. (In a report to the San Diego County Board of Supervisors), p. 3.

⁸ Long Term Care Integration Project, <http://www.sdcounty.ca.gov/hhsa/programs/ais/ltcip/index.html>

Integrity unit staff investigate alleged fraudulent actions by consumers, caregivers and relatives as they receive them and work closely with the DA's office to prosecute them when possible. The citizens of San Diego County deserve to know their tax dollars are expended appropriately to help those receiving in-home services live safely and securely. Finally, the Grand Jury expects County government officials to work in a coordinated manner to assure that elderly and disabled adults receiving tax funded services are protected from unscrupulous persons who may want to do them harm.

FACTS AND FINDINGS

Fact: Approximately 25,000 San Diego County residents receive IHSS services; 22,000 caregivers assist them with domestic and personal care.

Fact: The County's contribution to IHSS in 2009/2010 was approximately 17.5% or \$53 million of the \$305 million in taxpayer funds spent in the County for caregiver services. According to data provided by the County, costs have increased approximately 9% per year since 2000 and are unsustainable.

Fact: The majority (67%) of caregivers are family members, friends or otherwise known to the consumer.

Fact: The consumer is responsible for hiring, supervising, firing, signing the time card and otherwise serving as the employer of the caregiver.

Fact: A Public Authority manages the caregiver application process, maintains a caregiver registry, handles caregiver payroll and serves as the "employer of record" primarily for these accounting functions.

Fact: IHSS caseworkers and the Public Authority staff are prohibited by law from verifying services were delivered and validating hours worked by caregivers; the unverified data are transmitted to Sacramento and payroll checks are issued to caregivers.

Fact: An IHSS consumer may unknowingly hire a convicted felon as a caregiver who will be paid with taxpayer funds; regulations prevent the County from informing the consumer and disqualifying the provider when a criminal past is discovered during the required background check.

Fact: Temporary restraining orders filed by consumer groups and caregiver unions have prevented the full implementation of IHSS reforms passed by the legislature to control costs and prevent convicted felons from working as caregivers.

Finding 01: State and federal laws regarding the administration of the IHSS program are complex, overlap and contain many loopholes that could lead to fraud and/or abuse and prevent the County from validating that services are delivered to consumers.

Finding 02: Eligibility criteria for IHSS services are imprecise and may not be interpreted uniformly by all counties.

Finding 03: The IHSS program regulations and the enormous caseloads carried by IHSS caseworkers do not allow close monitoring of consumers and caregivers to assure services are

delivered appropriately, especially to those consumers receiving the maximum care hours and funding. Such large caseloads may result in the caseworker failing to detect a consumer is being physically or financially abused and/or neglected.

Finding 04: Sheriff's investigators do not have access to IHSS consumer records to conduct criminal investigations.

Finding 05: The County is required to seek a federal "Medicaid waiver" and state approval to implement a comprehensive, coordinated long-term care program that provides a **system of care** rather than uncoordinated, stand-alone programs delivering only one mode of care, such as in-home care.

Finding 06: County officials recognize the shortcomings of the IHSS model and have taken steps to improve it within the limitations permitted by state and federal law. This includes instituting the new state-mandated Public Integrity unit to prevent, detect and prosecute fraud, and ensure **all** caregivers completed a background check by December 31, 2010. However, the state's failure to provide working protocols for the investigators inhibits the unit's ability to discover or prevent fraud.

RECOMMENDATIONS

The 2010/2011 San Diego County Grand Jury recommends that the San Diego County Board of Supervisors:

- 11-21:** Write legislation, in collaboration with local state legislators, which revises the eligibility requirements for In-Home Supportive Services to ensure that consumers clearly need such services to remain safely in their home.
- 11-22:** Write legislation, in collaboration with local state legislators, which revises time card management regulations to permit local In-Home Supportive Services and Public Authority staff to validate caregiver time cards.
- 11-23:** Direct the Health and Human Services Agency to develop a plan to encourage the state legislature and the appeals court to implement the existing law that will prevent all convicted felons from working as In-Home Supportive Services caregivers.
- 11-24:** Direct the Health and Human Services Agency to form a County task force/working group consisting of representatives of the District Attorney's office, Sheriff, local police departments, Adult Protective Services, In-Home Supportive Services and other appropriate agencies to coordinate and evaluate cases of all types of elder and disabled abuse (neglect, physical, financial) and fraud by staff, caregivers, relatives and the consumers themselves. For example, the Sacramento County District Attorney formed a similar task force to coordinate efforts to prevent and detect fraud in this program.

- 11-25: Provide evidence that the County has requested a “Medicaid waiver” that will allow the County to use In-Home Supportive Services and other appropriate social services funds to implement the approved long-term, integrated “system of care” for frail elderly and disabled citizens who meet the eligibility criteria.**

The 2010/2011 San Diego County Grand Jury recommends that the San Diego County Health and Human Services Agency:

- 11-26: Develop a paid or unpaid internship with local universities that educate future social workers to handle routine tasks, i.e. paperwork, returning phone calls, other follow-up functions, etc., freeing caseworkers to give more attention to at-risk consumers. This proposed program could be funded by available grants and serve as a recruiting tool for future caseworkers.**
- 11-27: Develop an interagency agreement with the San Diego County Sheriff to permit Sheriff’s investigators access to the records of consumers enrolled in In-Home Supportive Services for criminal investigations.**

The 2010/2011 San Diego County Grand Jury recommends that the San Diego County District Attorney:

- 11-28: Collaborate with the Health and Human Services Agency to form a County task force/working group consisting of representatives of the Sheriff, local police departments, Adult Protective Services, In-Home Supportive Services and other appropriate agencies to coordinate and evaluate all cases of elder and disabled abuse (neglect, physical, financial) and fraud by staff, caregivers, relatives and consumers themselves.**

The 2010/2011 San Diego County Grand Jury recommends that the San Diego County Sheriff:

- 11-29: Develop an interagency agreement with the Health and Human Services Agency to permit Sheriff’s investigators access to the records of consumers enrolled in In-Home Supportive Services for criminal investigations.**

REQUIREMENTS AND INSTRUCTIONS

The California Penal Code §933(c) requires any public agency which the Grand Jury has reviewed, and about which it has issued a final report, to comment to the Presiding Judge of the Superior Court on the findings and recommendations pertaining to matters under the control of the agency. Such comment shall be made *no later than 90 days* after the Grand Jury publishes its report (filed with the Clerk of the Court); except that in the case of a report containing findings and recommendations pertaining to a department or agency headed by an elected County official (e.g. District Attorney, Sheriff, etc.), such comment shall be made *within 60 days* to the Presiding Judge with an information copy sent to the Board of Supervisors.

Furthermore, California Penal Code §933.05(a), (b), (c), details, as follows, the manner in which such comment(s) are to be made:

- (a) As to each grand jury finding, the responding person or entity shall indicate one of the following:
 - (1) The respondent agrees with the finding
 - (2) The respondent disagrees wholly or partially with the finding, in which case the response shall specify the portion of the finding that is disputed and shall include an explanation of the reasons therefor.
- (b) As to each grand jury recommendation, the responding person or entity shall report one of the following actions:
 - (1) The recommendation has been implemented, with a summary regarding the implemented action.
 - (2) The recommendation has not yet been implemented, but will be implemented in the future, with a time frame for implementation.
 - (3) The recommendation requires further analysis, with an explanation and the scope and parameters of an analysis or study, and a time frame for the matter to be prepared for discussion by the officer or head of the agency or department being investigated or reviewed, including the governing body of the public agency when applicable. This time frame shall not exceed six months from the date of publication of the grand jury report.
 - (4) The recommendation will not be implemented because it is not warranted or is not reasonable, with an explanation therefor.
- (c) If a finding or recommendation of the grand jury addresses budgetary or personnel matters of a county agency or department headed by an elected officer, both the agency or department head and the Board of Supervisors shall respond if requested by the grand jury, but the response of the Board of Supervisors shall address only those budgetary or personnel matters over which it has some decision making authority. The response of the elected agency or department head shall address all aspects of the findings or recommendations affecting his or her agency or department.

Comments to the Presiding Judge of the Superior Court in compliance with the Penal Code §933.05 are required from the:

<u>Responding Agency</u>	<u>Recommendations</u>	<u>Date</u>
San Diego County Board of Supervisors	11-21 through 11-25	7/19/11
San Diego County Health and Human Services Agency	11-26 through 11-27	7/19/11
San Diego County District Attorney	11-28	6/20/11
San Diego County Sheriff	11-29	6/20/11